

164808



April 23, 2002

U.S. Department of Transportation
 DOT Docket Management Facility
 Room PL-401, Plaza Level
 400 Seventh Street, SW
 Washington, D.C. 20590

RE: Security Programs for Aircraft 12,500 Pounds or More
Docket No. TSA-2002-11604 - 25

Dear Sir/Madam:

The Transportation Trades Department, AFL-CIO (TTD), **submits** these comments in response to the Transportation Security Administration (TSA) final rule on **Security Programs for Aircraft 12,500 Pounds or More**. TTD represents **34** transportation unions whose millions of members include workers in the aviation, **rail**, transit, trucking, highway, longshore, maritime and related **industries**. These unions have long been concerned about safety and security, and we appreciate the opportunity to present our views.

At the outset, we would note that a **TTD** member union, the Air Line Pilots Association (**ALPA**), has also **submitted** comments in response to **this final** rule. We urge you to rely on **the** expertise offered by **ALPA and all TTD member unions** as you **address** the issues surrounding this regulatory proceeding.

Let me **emphasize that** transportation labor is deeply concerned with the agency's decision to **issue** a final rule without adequate **prior** notice and a legitimate **period for** public comment. We believe that the **TSA** should **have** issued a Notice of **Proposed Rulemaking (NPRM)** in **order** to allow the public adequate time to consider **and comment** on the rule and, just as importantly, to allow the **TSA** **an adequate** opportunity to **consider** comments and revise the rule as **necessary**. At a minimum, the **rule as** issued should have been an Interim **Final Rule**, thereby sending the **proper** message to the public and to **the** nation's transportation workers that their views **are** important to **the** DOT and TSA. This is especially troubling since TTD **has previously** submitted comments outlining transportation labor's views on the Criminal History Records Checks (CHRC) requirement and to date none of our concerns have been addressed.

'Attached at 1 is a complete list of TTD affiliated unions.

Transportation Trades Department, AFL-CIO

888 16th Street, N W • Suite 650 • Washington, DC 20006 • tel: 202.628.9262 • fax: 202.628.0391 • www.ttd.org
 Sonny Hall, President • Patricia Friend, Secretary-Treasurer • Edward Wytkind, Executive Director

Having said that, TTD **supports** vigorous transportation security measures in passenger and all cargo operations. However, we are extremely **concerned** with the flight crew fingerprint-based criminal history records checks (CHRC) included in this final rule. We have long held the **view** that the **imposition of criminal history checks on job applicants** – rather **than** on current employees with proven **track** records – is a better and far more cost-effective way of **ensuring** that those **who pose** the highest security **risks do** not obtain sensitive positions. But if criminal checks **are** to be performed on existing employees, **we have** argued strenuously **that** the final rules **must** provide procedural and due process protections **and** grant covered employees the right to a fair appeal process.


Furthermore, we **have concerns** With employer trade associations serving as a clearinghouse for confidential **employee** information and having access to **FBI** criminal databases to **perform CXRC**. **As experience has already shown** in the **airline industry**, dedicated airline employees **including many** with **unblemished** employment **histories**, will be fired or **unfairly** disciplined for information obtained through a record check. This is hardly the **intent** of Congress or the DOT in moving ahead with the implementation of these **new** requirements **bom** out of the airline **security** legislation enacted last fall.

Earlier this year, we outlined these **and** other concerns **with respect** to the **CHRC** requirement **for** employees **with** access to airport **Security Identification Display Areas (SIDA)** in our response of **March 11, 2001 on Criminal History Records Checks** (FAA Docket Number 2001-10999). Specifically, we believe that the Department of Transportation **CHRC proposals**, as currently constructed, **violate** basic **employee** rights **and disregard** traditional notions of **fairness** and **due** process. Because these **two final rules are** similar in their use of CHRC's, we request that **our** response of March 11, 2001, **which I have** attached, be **made a part** of your deliberations **and** the docket's record in this proceeding.²

Clearly, the CHRC initiative must be reconsidered **and** reformed. **I urge** the **agency to** consider **our** **views and** those of **our** member unions **and** to move more deliberatively **to stop the unfair and** improper treatment of airline **workers**. It is **our** sincere hope that we can **work** together to correct the **many flaws we have** identified in this rule **and** in Docket No. FAA-2001-10999.

Thank you for the opportunity to **share our views**.

Sincerely,



Edward Wytkind
Executive Director

² Attached is TTD's submission of March 11, 2001 to Docket No. FAA-2001-10999.

ATTACHMENT 1



TTD AFFILIATES

The following labor organizations are members of and represented by the TTD:

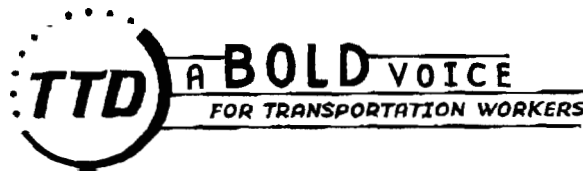
*Air Line Pilots Association
 Amalgamated Transit Union
 American Federation of State, County and Municipal Employees
 American Federation of Teachers
 Association of Flight Attendants
 American Train Dispatchers Department
 Brotherhood of Locomotive Engineers
 Brotherhood of Maintenance of Way Employees
 Brotherhood of Railroad Signalmen
 Communications Workers of America
 Hotel Employees and Restaurant Employees Union
 International Association of Fire Fighters
 International Association of Machinists and Aerospace Workers
 International Brotherhood of Boilermakers, Blacksmiths, Forgers and Helpers
 International Brotherhood of Electrical Workers
 International Brotherhood of Teamsters
 International Longshoremen's Association
 International Longshore and Warehouse Union
 International Organization of Masters, Mates & Pilots, ILM
 International Union of Operating Engineers
 Laborers' International Union of North America
 Marine Engineers Beneficial Association
 National Air Traffic Controllers Association
 National Association of Letter Carriers
 National Federation of Public and Private Employees
 Office and Professional Employees International Union
 Professional Airways Systems Specialists
 Retail, Wholesale and Department Store Union
 Service Employees International Union
 Sheet Metal Workers International Association
 Transportation Communications International Union
 Transport Workers Union of America
 United Mine Workers of America
 United Steelworkers of America*

April 2002

Transportation Trades Department, AFL-CIO



ATTACHMENT 2



March 11, 2002

VJA INTERNET FILING

U.S. Department of Transportation
Docket Management System
400 Seventh Street, S.W., Room Plaza 401
Washington, D.C. 20590

RE: Docket No. FAA-2001-10999

Dear Sir or Madam:

The Transportation Trades Department, AFL-CIO (TTD) submits these comments in response to the final rule for Criminal History Records Checks (CHRC), effective December 6, 2001, applicable to airport security programs under 14 CFR Part 107 and air carrier security programs under 14 CFR Part 108.² TTD represents 34 transportation unions whose millions of members include workers in aviation, rail, transit, trucking, highway, longshore, maritime and related industries.³ This rule will directly affect nearly one million aviation, airport and industry contract employees with access to airport Security Identification Display Areas (SIDA). For that reason, we encourage the Department of Transportation (DOT) and the Federal Aviation Administration (FAA) to seriously consider our suggestions and those filed separately by our member unions.

Introduction

For transportation workers nothing is more important than the security and safety of the transportation system.⁴ It is our sincere hope that government proceedings such as these, with their focus on delving into the backgrounds of airline workers, do not distract attention away from the

¹ Docket No. FAA-2001-10999, Criminal History Records Checks; Final Rule, 66 Fed Reg 63474 (December 6, 2001).

² These regulations were recently recodified at 49 C.F.R. Sections 1542 and 1544. 67 Fed. Reg. 8340 (Feb. 22, 2001).

³ Attached at 1 is a list of TTD affiliated unions.

⁴ Attached at 2 is a policy resolution outlining transportation labor's views on transportation security adopted October 23, 2001 by the TTD Executive Committee, which is comprised of the presidents and senior officers representing the organization's 34 affiliated unions.

Transportation Trades Department, AFL-CIO

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need to pursue **vigorous** new transportation security measures in passenger and all *cargo* operations such as those recommended in TTD's policy statement. In the wake of September 11, the concerns stemming from security breaches in the transportation industry system hit home for transportation workers. Everyday millions of transportation workers report to **work at** airports and throughout the transportation system and we recognize that for our **industry** and nation to rebound and **thrive**, we must restore **faith** in the safety and **ease** of **transportation** in America. In the process, however, our **government** must also protect the **due** process rights of transportation workers so they can devote their full energies to performing **their jobs** well and not be distracted by fear and uncertainty, or face unfair treatment.

Unfortunately, in the post-9-11 environment, much of the focus on security issues **has** been directed at criminal history checks of current employees. The imposition of criminal history checks on **job** applicants – rather **than** on current **employees** with **proven track** records – is a better and far more cost-effective way of **ensuring** that those who pose the highest **security risks** do **not** obtain sensitive positions. For those employees employed prior to the effective date of the rule, there is **no need** to impose the **expense and** administrative burden of such a check. **This is** especially true for current workers who **are** certified to perform their duties and **thus**, have already undergone governmental scrutiny, **These** employees have already demonstrated their fitness to perform their respective **jobs** under already rigid federal regulatory requirements; **and**, in fact, prior to the **FAA's** implementation of new congressionally imposed criminal **history** check **requirements**, these employees were already required to report convictions **as** they **occur** on **their** FAA medical applications, which are renewed regularly. Individuals who have previously reported **disqualifying** offenses to the FAA should **be** grand fathered and allowed access to secure **areas**. The regulations should be amended to specifically provide for this. **In** light of the large number of **currently** certified and regulated transportation employees, **there** is no compelling need to subject most airline **workers** to after-the-fact records **check**. Additionally, we also believe that the 10 year "look back" period is inappropriate, **and** should be reduced to five **years**.

However, **having raised** these preliminary **concerns** With the rule, if the **DOT** continues to mandate that individuals undergo **CHRC's** who are applying for unescorted **SIDA** access **as well as** individuals **who are authorized** to perform screening functions, it **is** imperative that employees be treated with fairness **and dignity**, and are afforded proper due **process**. We strongly believe that the FAA must more strictly **limit** how employers and others use information obtained in a CHRC. Furthermore, employees must have the unencumbered right to appeal adverse decisions and subsequent actions taken **as** a result of criminal history record checks.

Transportation **workers are** fully aware of the unprecedented security challenges facing **our nation** and are **committed to** helping **our** government formulate an effective and appropriate response to the current climate. But **we** submit **that** transportation **security objectives can be** met Without **trampling** on **workers' rights**. Below, we offer an overview of **our** positions and a commitment to **work** With **the DOT** to develop a proposal that promotes **security and** ensures the due process rights of workers.

Due Process

Our first concern is that the regulation does not provide a due process venue for employees with convictions during the 10 year look back period. The regulation makes no provision for any exceptions if an employee has a conviction of a listed crime but due to compelling facts could otherwise demonstrate that he or she does not pose a security risk.

As a hypothetical example, let us say that a mechanic was convicted of one of the enumerated crimes eight years ago. He reported the conviction to the air carrier and the FAA, both of whom determined that the conviction would not impair his ability to perform safely as a mechanic. Since then, the mechanic has performed his job with no difficulty for eight years, and now, solely because of the rule, will lose his livelihood because access to the ramp area will be denied. Another hypothetical example could be a flight attendant with an unblemished employment record convicted of shoplifting 9 ½ years ago. Because the value of the stolen items totaled over \$500, this could be considered a felony in a number of jurisdictions. Under the rule, this employee would lose his or her job. There are circumstances like both these examples where the CHRC needs to look at the particular offense and surrounding circumstances to determine whether they realistically create a security hazard.

We would also note that the present rule may cause particularly harsh results with respect to economically disadvantaged individuals who have invested time and resources in airline careers as a way of lifting themselves out of difficult circumstances. Many such persons may have committed disqualifying offenses, but nevertheless have undertaken to gain aviation related skills as part of the rehabilitation process. Carriers such as American have had, at various times, minority recruitment programs which provided training to persons with disadvantaged backgrounds. We believe it is both unnecessary and cruel to deprive persons of careers which are the product of sincere and legitimate attempts at personal rehabilitation.

The rule should provide for due process for employees in this and similar circumstances to show that past conduct does not necessarily impact security. Even though an employee has a disqualifying conviction, it does not automatically mean he or she is a security risk. In fairness, before losing their livelihood, employees in these circumstances should have an opportunity to demonstrate his or her fitness to enter the secure areas of the airport.

Right to an Appeal

We support each employee having the right to an independent appeal of a decision to disqualify, up to the Secretary of Transportation or an official designated to act for the Secretary. The Secretary's decision should then be subject to judicial review under the terms of the Administrative Procedures Act. Additionally, prior to actual disqualification, an employer should not be permitted to remove a worker from a position requiring CHRC for security reasons, absent independent evidence that the employee presents a security threat. Once an employee is disqualified, if the employee appeals the

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As a hypothetical example, let us **say** that a mechanic was convicted of one of the enumerated crimes eight years **ago**. He reported the conviction to **the** air carrier and the FAA, both **of** whom determined that the conviction would not impair **his** ability to perform safely **as** a mechanic. **Since** then, the mechanic **has** performed his job **with** no difficulty for eight years, **and now**, solely because of the rule, will **lose** his livelihood because **access** to the **ramp** area will be denied. **Another** hypothetical example could be a flight attendant **with** an unblemished employment **record** convicted of shoplifting 9 ½ years ago. Because **the** value of the stolen items totaled over \$500, this **could** be considered a **felony** in a number of **jurisdictions**. Under the rule, **this** employee would lose his or her job. There are **circumstances** like **both** these examples where the CHRC needs to **look** at the **particular** offense and surrounding **circumstances** to determine **whether** they realistically create a **security hazard**.

We would also note that the present rule may cause particularly **harsh** results with respect to economically disadvantaged individuals who have invested time **and** resources in airline careers **as** a way of **lifting** themselves out of difficult **circumstances**. **Many** such persons may have committed disqualifying offenses, but nevertheless have **undertaken** to **gain** aviation related skills as part of the rehabilitation process. Carriers such **as** **American** have had, **at** various times, minority recruitment **programs** which provided training to persons with disadvantaged backgrounds. We believe it is **both** **unnecessary** and cruel to deprive persons of **careers** which are the product of sincere and legitimate attempts at personal rehabilitation.

The rule **should** provide for due process **for** employees **in this and** similar circumstances to **show** that past conduct does not **necessarily** impact security. Even though **an** employee has **a** disqualifying conviction, it does not automatically mean he or she is a security **risk**. In fairness, before losing **their** livelihood, employees in these circumstances should **have an** opportunity to demonstrate **his** or her fitness to enter **the** secure **areas** of the **airport**.

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determination, he or she must be entitled to any rights under a collective bargaining agreement to hold a job that does not require SIDA clearance, pending the appeal. If an appeal is successful, the employee should be returned to the position he or she held prior to disqualification.

Nan-Disqualifying Actions

We are also concerned that the regulations permit adverse action against employees when a CHRC discloses an arrest without a disposition.⁵ We urge that unescorted access authority be maintained for individuals whose CHRC discloses an arrest for any disqualifying criminal offense without indicating a disposition. Clearly, an arrest determination does not qualify as a conviction under the statute. The individual's unescorted access authority should continue to be maintained until the airport or aircraft operator determines, after investigation, that the arrest resulted in a conviction or a finding of not guilty by reason of insanity of one of the enumerated disqualifying criminal offenses.

The regulations should also make clear that offenses which have been expunged or pardoned do not constitute "convictions" and are not considered disqualifying offenses for purposes of the regulatory scheme. Moreover, that determination should govern from whatever point in time the offense is removed or cleared from the individual's records.

Need for Clarification of Certain Offenses

The offenses currently identified in the regulations as "explosives" and "weapons" should be more specifically defined and limited to cover only traditional firearms and dangerous explosives used with the intention of inflicting harm. Under the current regulations, a longtime airline employee previously convicted of unlawful use of an explosive, resulting from his use of fireworks on July 4th while on vacation in a jurisdiction that he was unaware prohibited them, could be at risk of losing his career. Such an individual poses no security risk and should not be adversely affected,

It is necessary that the regulatory scheme provide a means to ensure that such employees' careers are not destroyed based on convictions that, in fact, have no nexus to airline security. The crime of "unlawful possession of a weapon" is one that without further definition or consideration of the factual context could be extremely misleading. Possession of a legal and registered gun in one state can be illegal in a nearby state and, in certain circumstances, result in such a conviction. For example, a longtime airline employee living in Virginia who drives into Washington, D.C. forgets about the gun in his trunk, is stopped in D.C., and then charged with unlawful possession of a gun even though the gun is legal and registered in his home state. Examples, such as these, are reflective of real people who pose no security threat but stand to have their livelihood destroyed unless the regulatory scheme is modified. The regulations should provide more limiting definitions, include consideration of the surrounding facts in applying the definitions, and provide for the due process discussed above to determine whether the crime for which the person was convicted actually poses a security threat.

⁵ See Final Rule pg 63482, 63485.

determination, he or she must be entitled to any rights under a collective bargaining agreement to hold a job that does not require SIDA clearance, pending the appeal. If an appeal is successful, the employee should be returned to the position he or she held prior to disqualification.

Non-Disqualifying Actions

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It is necessary that the regulatory scheme provide a means to ensure that such employees' careers are not destroyed based on convictions that, in fact, have no nexus to airline security. The crime of "unlawful possession of a weapon" is one that without further definition or consideration of the factual context could be extremely misleading. Possession of a legal and registered gun in one state can be illegal in a nearby state and, in certain circumstances, result in such a conviction. For example, a longtime airline employee living in Virginia who drives into Washington, D.C. forgets about the gun in his trunk, is stopped in D.C. and then charged with unlawful possession of a gun even though the gun is legal and registered in his home state. Examples, such as these, are reflective of real people who pose no security threat but stand to have their livelihood destroyed unless the regulatory scheme is modified. The regulations should provide more limiting definitions, include consideration of the surrounding facts in applying the definitions, and provide for the due process discussed above to determine whether the crime for which the person was convicted actually poses a security threat.

⁵ See Final Rule pg 63482, 63485.

Confidentiality/Access to Information

Currently, the regulations contain provisions that entitle employees to obtain, and require employers "to provide the individual with a copy of the FBI record if he or she requests it."⁶ We believe that as soon as the possibility for disqualification is determined, it should be mandatory that all relevant information supporting disqualification be immediately provided to the affected individual.

Additionally, while there is a time line of 30 days for the individual to notify the airport or aircraft operator of his or her intent to correct any information the employee believes to be inaccurate in his or her record, there is no time line for the airport or aircraft operator to respond to the employee appeal. This could possibly result in the worker being out of the current position while awaiting the response from airport or aircraft operator. The regulations should require that the airport or aircraft operator respond to the employee within a reasonable period of time.

Although the current regulations provide limits on the use of information obtained from CHRC's, the restrictions should be made more explicit and more stringent. We have already seen instances of efforts to terminate employees based on otherwise non-disqualifying offenses disclosed by FBI record checks. To avoid such actions, we suggest the establishment of a PASS/FAIL system in providing information to employers. With respect to an employee who fails the check, an employer would be given only the information documenting the disqualifying offense. In the case of an employee who passes, no information other than the "PASS" result would be given to the employer. In the event the employer receives information beyond what is necessary to determine entitlement to access, it should be specifically precluded by regulation from taking any adverse employment action based on such information.

Since we have already seen information obtained from the FBI checks used beyond the scope of the regulatory requirements, additional DOT action is necessary. Since such employer actions are occurring despite the prohibition against using FBI record information for such purposes, we urge the DOT to further strengthen the regulatory provisions. Additionally, we request a clarification that employers who use FBI criminal record information in a manner contrary to or beyond the scope of the regulations, will be subject to investigation, regulatory enforcement and civil penalty actions by the FAA and the Transportation Security Administration. And of course, it is essential that enforcement and sanction authority be fully exercised.

Fingerprinting Fees

Transportation labor supports the requirements in this regulation for all airport and aircraft operators to pay the costs for any and all fingerprinting. We believe since it is the airport and aircraft operators responsibility to ensure that the regulations are followed then they should also assume the financial

⁶ See 14 C.F.R. Sections 107.209(h)(1) and (3); 108.229(h)(1) and (3).

burden of implementing these regulations. We urge this requirement be **maintained** in the final regulations to ensure that employees do **not** assume the financial burden of paying for such criminal history record checks.

Alternative Work Arrangements

We also support permitting **under** the appropriate circumstances **the right** of employees **who** become **disqualified due to a background check to transfer to jobs in non-secure areas**. A **good** deal of **this** will depend **upon** existing collective bargaining agreements. **As** a first step, employees **disqualified from a secure position** following a CHRC should at least be **given any opportunity available under their collective bargaining agreement to obtain a non-secure position**.

Conclusion

Overall, we remain **concerned** that employees in the aviation industry have become the **targets** of **unlimited mandatory criminal history records checks with little attention being given to the need** for due process protections. **As** currently constructed, this **CHRC** proposal violates basic employee **rights and** disregards **traditional** notions of **fairness and due process**. **TTD** and its affiliated aviation **unions** are committed to **ensuring that, at a minimum, this CHRC proposal includes specific due process protections for workers**. We **will** continue to oppose **and speak out against** excessive **CHRC** measures **and** will insist that **appropriate employee protections** including **appeal** procedures be incorporated in any **CHRC program**.

TTD and a number of **our** affiliates participated **in** this rulemaking process to **ensure** that transportation worker protections and priorities, **as well as** the welfare of the traveling public, **are** reflected in **this rule**. **Our** affiliates and their **members** have been at the front **lines** of promoting **and fighting** for the security of our **transportation system**, and we urge the **DOT** and the **FAA** to carefully evaluate **our** views before a **final rule** is completed.

Thank you for allowing us **this opportunity to share our views**.

Sincerely,



Edward Wytkind
Executive Director

ATTACHMENT 1

TTDAFFILUTES

The following labor organizations are members of and represented by the TTD:

Air Line Pilots Association
 Amalgamated Transit Union
 American Federation of State, County and Municipal Employees
 American Federation of Teachers
 Association of Flight Attendants
 American Train Dispatchers Department
 Brotherhood of Locomotive Engineers
 Brotherhood of Maintenance of Way Employes
 Brotherhood of Railroad Signalmen
 Communications Workers of America
 Hotel Employees and Restaurant Employees Union
 International Association of Fire Fighters
 International Association of Machinists and Aerospace Workers
 International Brotherhood of Boilermakers, Blacksmiths, Forgers and Helpers
 International Brotherhood of Electrical Workers
 International Brotherhood of Teamsters
 International Longshoremen's Association
 International Longshore and Warehouse Union
 International Organization of Masters, Mates & Pilots, ILA
 International Union of Operating Engineers
 Laborers' International Union of North America
 Marine Engineers Beneficial Association
 National Air Traffic Controllers Association
 National Association of Letter Carriers
 National Federation of Public and Private Employees
 Office and Professional Employees International Union
 Professional Airways systems Specialists
 Retail, Wholesale and Department Store Union
 Service Employees International Union
 Sheet Metal Workers International Association
 Transportation • Communications International Union
 Transport Workers Union of America
 United Mine Workers of America
 United Steelworkers of America



ATTACHMENT 2

TRANSPORTATION SECURITY IN THE AFTERMATH OF THE SEPTEMBER 11 TERRORIST ATTACKS

For transportation workers nothing is more important than the security and safety of the transportation system – their workplace. For current employees and future generations of workers in this industry, the September 11 terrorist attacks will serve as a painful reminder of the many unexpected dangers they face on the job.

Both during and following these brutal assaults against our country, workers who operate, maintain, build and provide emergency response for the transportation industry demonstrated their courage, dedication and skill. Thirty-three pilots and cabin crew members died on board the aircrafts used as weapons of destruction. Fire fighters, other emergency responders and workers in the construction trades were among the first on the scene at the World Trade Center, the Pentagon and in Pennsylvania. Many of these courageous men and women also perished with hundreds injured. Members of the Operating Engineers and Fire Fighters have been at so-called “ground zero” in New York City, training workers on the spot in the safest methods to deal with the threat of exposure to potentially lethal and toxic substances at the demolition site.

The concerns stemming from security breaches in the transportation system hit home for transportation workers today more than ever before. The airplanes, buses, trucks, railroad and transit systems, ports and highways are where millions of transportation workers report to work each day. Transportation workers know well that for our industry and our nation to rebound and thrive, we must restore faith in the safety and ease of transportation in America. In the process, it is imperative that we protect the safety of transportation workers so they can devote their full energies to performing their jobs well and not be distracted by fear, worry and uncertainty.

Given the severity of the nation’s transportation security needs, it is irresponsible that certain Republican leaders in Congress have delayed consideration of a sweeping aviation security bill. Accounts of private meetings between some of these GOP leaders and aviation industry lobbyists to activate these special interests in favor of their agenda are clear examples of playing politics with transportation security at a time when Americans want action, not partisan gamesmanship. The inability of these leaders to overcome their own anti-government bias has blocked action on this legislation, and we call on the House of Representatives to join the Senate in completing this much needed bill and other transportation security measures advocated by TTD affiliates.

The effectiveness of efforts to close safety and security gaps in the transportation system will be dependent on the transportation workforce. We have entered a new era, and it requires extensive training for and technical knowhow among those who make our transportation system work. These changing times affect all transportation workers, from those working in airports and on airplanes, to those who operate our bus and transit systems, transport hazardous materials and other cargo, and

deliver our mail and parcels at a time of chemical and biological threats. Especially for workers who may be exposed to terrorist threats, government and employers must provide not only training and protection, but timely and accurate information about threats to their health and safety.

Unfortunately, much of the focus on employee issues has been directed at criminal background check measures. Pre-employment background checks for new hires have become far more common in our industry as a means of preventing those who pose the highest security risks from ever obtaining sensitive positions. We believe that pre-employment checks are far more cost-effective than criminal background checks on workers with, for example, a 20-year record of exemplary service to his or her employer. Many of these employees underwent background checks at the beginning of their employment and bring a long record of integrity and dedication to the workplace.

In any type of criminal background check, it is imperative that employees be treated with fairness and dignity, and are afforded proper due process. Background checks can raise civil rights and privacy issues, particularly if a group is unfairly targeted due to race, ethnicity, or national origin. Criminal background checks, in the absence of a link to any suspicion or threat, are costly and damaging to employee morale. We must also carefully consider how employers and others may use information obtained in a background check. Employees must have the unencumbered right to appeal decisions and subsequent actions taken as a result of background checks. Transportation workers are fully aware of the unprecedented challenges facing our nation and are committed to helping our nation formulate an effective and appropriate response to the current climate. But we submit that transportation security objectives can be met without trampling on workers' rights. TTD urges Congress to reject draconian or punitive approaches in the consideration of background check procedures, such as those employed in pending seaport security legislative proposals in the U.S. Senate.

Worker training is especially important in these times, as training under existing practices and federal mandates is not and never was geared towards situations such as the September 11 attacks where terrorists used our transportation system to carry out suicide missions of mass proportion. This new reality requires an absolute overhaul of training requirements and demands the dedication of significantly more resources for achieving new employee training and preparedness objectives.

Hazardous materials training for transportation workers takes on added importance in this era of heightened security concerns. Hazmat training in every freight and passenger transportation setting is critical for all those who transport hazardous materials and who may be first responders during an incident or accident. We must also know who is engaging in hazmat transportation, especially given the shocking reports of possible terrorists seeking to illegally obtain permits to carry hazardous materials. Legislation is needed to impose tougher entry requirements on those seeking government authority to transport hazardous materials. Our government must also ensure the nation's firefighters are equipped to respond to all types of transportation emergencies. Knowing that two-thirds of the nation's fire departments are drastically understaffed, transportation labor endorses the Staffing for Adequate Fire and Emergency Response (SAFER) Act, which would provide \$1 billion a year in

federal funding to hire 75,000 new firefighters over seven years. Further, we support affiliate unions' calls for higher staffing levels, better equipment and enhanced training, particularly for those workers who are most likely to be confronted with catastrophic events such as acts of terrorism or bio-terrorism.

Obviously, employees are at the center of any enhanced security systems. Those who perform vital security functions – such as airport baggage screeners and other security personnel – must be treated like essential links in the security chain. Low wages, inadequate training, turnover rates as high as 400 percent and unacceptable working conditions – a problem not found solely in airports – can no longer be tolerated if we are serious about security in our transportation system. The well publicized scandal involving Argenbright Security Inc., which provides security screening in many major airports nationwide, uncovered a pattern of shabby employee training, violations of pre-employment background check requirements, false and misleading statements by managers, and problems such as the hiring of screeners who could not meet basic English language requirements. The U.S. Attorney last week asked for a court hearing to consider charges that the company was continuing “an astonishing pattern of crimes that potentially jeopardized public safety.” Transportation labor is committed to correcting these security threats and workplace abuses. Further, transportation workers know that the best way to raise labor standards is to ensure that these workers, whether they are employed in the public or private sector, are given the unfettered right to freely choose a union voice and bargain collectively.

Securing the entry points of access to transportation equipment must be a priority. Trucks, airplanes, buses, trains and ships must never be permitted to sit idle in poorly or unsecured areas. Newspaper accounts have shown acres of our nation's ports and other transportation facilities unprotected, with virtually no restrictions on access to equipment and cargo. Rail tunnels, bridges, maritime facilities and other key infrastructure must be better maintained and protected. We need greater perimeter fencing, 24-hour security patrols staffed by workers well trained in surveillance and law enforcement, and the smart deployment of technology to better guard the physical infrastructure in our transportation system.

There are virtually no checks on cargo that travels through our transportation system. In the airline industry, we are going to great lengths to screen passengers and their carry-on bags, while giving scant attention to the cargo and checked baggage that goes into the belly of the aircraft. The same can be said with respect to passenger rail operations. Checked airline baggage must pass a rigid security screening and meet a 100 percent match with passenger manifests. On a broader scale, new measures are needed to inspect and monitor the flow of luggage and cargo, respectively, throughout our passenger and freight transportation system.

Insufficient attention is also given to contractors who service equipment and operations in the transportation industry. For example, food service carts often arrive on board an aircraft after having been fully-loaded miles away from an airport which we work around-the-clock to secure. At a time

when breaches of **security** are of paramount concern, **the** surveillance of contractors **and** their workers **can** no longer be **an** afterthought, especially if the transportation industry persists in **using** contractors who themselves **may** present security risks.

This environment of heightened **security risk** also affirms transportation labor's decade-old opposition to allowing unsafe and uninspected **trucks** and buses from Mexico **using** their NAFTA privileges to travel freely **throughout** the United States. Twenty-five percent of the **trucks** crossing our **southern borders** carry hazardous materials, a result of the thriving chemical industry in the Maquiladora **region** in Mexico. The **current** state of the world demands **more**, not less, rigor **at** our borders. Years of independent **studies** show that the U.S. **is** unprepared to carry out its enforcement capabilities, and we support **the large majority in Congress** who oppose the **Bush** administration's plan to **open** the U.S.-Mexico border by early next year.

We must **do a better** job ensuring the safety of **those** who work **in** critical **areas** of **our transportation system**. Access to **areas** such as cockpits, air **traffic** control **and** other dispatch centers, maintenance **areas**, loading platforms, freight terminals **and** yards, **and** parts must be more closely monitored **and** guarded.

Our mass transit systems **are** particularly vulnerable to terrorist attack. A 1998 report by the U.S. Department of Transportation revealed that **attacks** against transportation accounted for 42 percent of all international **terrorist** attacks reported by the **U.S. State Department**. Vast improvements **in** preparedness and response plans are needed, particularly for mass **transit** systems which play **an** essential role during evacuation of **urban areas** during **crisis** situations. Global Positioning **Systems** **and** advanced **radio** and communications systems **are** important **technologies** that **should** be deployed.

Amtrak faces similar security risks and deserves immediate federal assistance. We strongly support legislative efforts to **bolster** Amtrak's **security** capabilities. In the wake of September 11, Amtrak **has** seen a **upswing** in **business** and its thousands of miles of **tracks**, bridges, tunnels, **and** other facilities remain vulnerable to criminal **and** terrorist **acts**. **Amtrak** employees **need** better training and resources to adapt to **increases** in **both** security demands and growing ridership. **As** Congress considers proposals to secure these sensitive **work areas**, it must also ensure that **Greyhound** is equipped with **additional** **guards** **and** cameras and is better able to inspect **passengers** **and** luggage and monitor its terminals. We call upon the federal government to provide financial assistance to implement these critical **steps**.

Indeed, the mission ahead to secure the transportation industry is daunting. But **an experienced**, well trained **and** adequately staffed workforce, combined with new aggressive federal security measures, **will** ensure that the **new** challenge to protect the **transportation** industry **from** terrorist and other threats will be met and **the** confidence in the system restored.

THEREFORE, BE IT RESOLVED THAT TTD AFFILIATED UNIONS WILL:

- ☐ **Call on Congress to invest ample new federal resources in and set higher standards for security training for workers;**
- ☐ **Urge Congress and the Bush administration to direct resources at more effective pre-employment screening of job applicants and to take great care to honor workers' rights in any programs aimed at identifying security risks among existing workers;**
- a** **Push for beefed-up requirements governing hazardous materials shipments and training and staffing for transportation workers and emergency response employees;**
- ☐ **Insist on the most rigid federal standards governing those who staff the nation's transportation security work force in airports and throughout the industry, as well as the unfettered right for these workers – in the public or private sector – to freely form and join unions; and**
- a** **Urge Congress and the President to include in any new transportation security legislation or regulations strong protective measures to secure entry points to transportation equipment and facilities in both passenger and cargo operations, and specifically to guard against security breaches involving contractors with access to secure areas.**

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